

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

**IN THE MATTER OF THE COURT OF APPEALS
SETTLEMENT CONFERENCE PROCEDURES.**

**Miscellaneous Order
No. 01- 37**

ORDER

This matter has come before the Court upon re-evaluation of the Appellate Mediation Office and the Court is satisfied that the office continues to significantly reduce the number of cases to be decided by opinion and continues to provide a valuable service to litigants. The Court therefore adopts the following procedures, pursuant to Rule 12-313 NMRA 1998, to hold conferences to facilitate the settlement of cases pending on appeal.

IT IS THEREFORE ORDERED THAT:

1. Appellate Mediation Office and Appellate Mediator. The Appellate Mediation Office operates under the direct supervision of an Appellate Mediator, an employee of the Court designated to oversee implementation of the program. Judges, their law clerks, prehearing staff attorneys, and administrative personnel of the Court shall not have access to information related to settlement that is generated by the activities of the Appellate Mediation Office.

1 **2. Mediation conference; scheduling and purpose.** The Appellate
2 Mediation Office may schedule and conduct mediation conferences in any matter
3 pending before the Court. The primary purpose of a mediation conference is to
4 explore settlement and simplify issues, but matters relating to processing of the
5 appeal may be discussed.

6 **3. Participation of counsel and parties.** Counsel shall participate in
7 every scheduled mediation conference and in related discussions. Generally, a
8 party may participate but need not unless required by the Appellate Mediator.
9 Conferences are conducted by telephone unless the Appellate Mediation Office
10 directs otherwise.

11 **4. Preparation of counsel for mediation conference; settlement**
12 **authority.** In preparing for the initial conference, counsel shall consult with
13 their clients and obtain as much authority as feasible to settle the case and to
14 agree on case management matters. These obligations continue throughout the
15 mediation process.

16 **5. Confidentiality.** Statements made during a mediation conference and
17 in related discussions are confidential and shall not be disclosed to any court by
18 the Appellate Mediation Office, counsel, or the parties. See Rule 11-408 NMRA
19 1998. The Appellate Mediator shall not communicate anything to the other side
20 that was revealed in a private discussion without authorization from counsel.

1 The proceedings shall not be recorded by counsel or the parties.

2 **6. Conference order; mediator authority.** The Appellate Mediator may
3 cause an order to be entered controlling the course of the mediation proceedings.
4 The Appellate Mediator is a delegate of the Court. All conference orders and
5 other directives from the Appellate Mediation Office shall be treated as any other
6 Court directive.

7 **7. Extensions.** The time allowed by Rule 12-211 NMRA 1998 for
8 causing a transcript to be filed, by Rule 12-212 NMRA 1998 for designating
9 exhibits and depositions, and by Rules 12-210 and -213 NMRA 1998 for filing
10 briefs and memoranda is not automatically tolled pending a mediation
11 conference, but the Appellate Mediator has authority to grant extensions of time,
12 whether specifically requested or not and whether requested orally or in writing.
13 If no extension order is entered, applicable time limits continue to run.

14 **8. Request for mediation conference by counsel.** Counsel or any Court
15 of Appeals Judge may request a mediation conference by contacting the
16 Appellate Mediation Office. All requests shall be kept confidential. The
17 Appellate Mediator shall determine whether a conference will be held.

18 **9. Sanctions.** The Court may impose sanctions if counsel or a party fails
19 to comply with these procedures or an order entered pursuant to these
20 procedures.

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JONATHAN B. SUTIN, Chief Judge

JOSEPH A. ALARID, Judge

LYNN PICKARD, Judge

JAMES J. WECHSLER, Judge

MICHAEL D. BUSTAMANTE, Judge

CYNTHIA A. FRY, Judge

CELIA FOY CASTILLO, Judge

IRA ROBINSON, Judge

RODERICK T. KENNEDY, Judge

MICHAEL E. VIGIL, Judge

